

**FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

DISTRICT : BOMBAY

WRIT PETITION NO.2780 OF 2005

Office notes, Office '
Memoranda of Coram, '
appearances, Court's '
orders or directions '
& Registrar's orders '

Court's or Judge's orders

Mr S.S. Redekar for Petitioners.
None for Respondents.

CORAM : D.K. DESHMUKH J.
DATE : 28TH SEPTEMBER 2005
P.C. :-

1. The petitioners filed suit in the year 1974. That suit was dismissed for default on 21st September 1993. Miscellaneous No.581 of 1993 was taken out. That application was dismissed for default on 23rd December 1999. Miscellaneous application No.70 of 2000 was taken out for restoration of both - miscellaneous application No.581 of 1993 and the civil suit. Though in miscellaneous application No.70 of 2000 there was no prayer made for setting aside the order dated 21st September 1993 and restoration of miscellaneous application No.581 of 1993, perusal of the affidavit filed in support of

miscellaneous application No.70 of 2004, however, shows that the petitioners have disclosed only one reason for remaining absent on 23rd December 1999 when miscellaneous application No.581 of 1993 was dismissed viz. the personal difficulty of the petitioners. The personal difficulty as spelt out was that the petitioner No.1 was in service of the MHADA. There is no averment to be found in the application that due to his illhealth, he could not remain present. Admittedly, no document was produced by the petitioners to support that the petitioner No.1 was in service of MHADA. The petitioners produced the document about illhealth, but there was no averment about illhealth. In these circumstances, both the Courts below have concurrently found that the petitioners have not made out a case for restoration. I do not find any illegality in the order impugned. Petition is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary as true copy.

. Certified copy expedited.